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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 TONY D. PENWELL,

11 Plaintiff,

12 v.

13 REED HOLTGEERTS, *et al.*,

14 Defendants.

CASE NO. C05-2106 TSZ-MAT

ORDER REQUESTING
SUPPLEMENTAL BRIEFING,
GRANTING PLAINTIFF'S MOTION
FOR ADDITIONAL DISCOVERY,
AND RENOTING RENEWED
MOTION FOR SUMMARY
JUDGMENT

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16 After plaintiff Tony Penwell was appointed counsel, defendants renewed their motion for
17 summary judgment. (Dkt. 145; *see* Dkt. 81.) In opposition, Mr. Penwell moved under Federal
18 Rule 56(d) for additional time to depose two declarants, to submit additional information, and
19 presumably to submit a supplemental affidavit highlighting genuine questions of material fact.
20 (Dkt. 150, at 18–19.) The Court finds that the parties have yet to address certain issues and
21 authorities, particularly while Mr. Penwell has had representation, and that further development
22 of the record would assist in resolving defendants' dispositive motion. The Court therefore

23 **ORDERS:**

24 ORDER REQUESTING SUPPLEMENTAL
BRIEFING, GRANTING PLAINTIFF'S MOTION
FOR ADDITIONAL DISCOVERY, AND
RENOTING RENEWED MOTION FOR
SUMMARY JUDGMENT - 1

1 1. The parties are **DIRECTED** to provide supplemental briefing on the following
2 issues:

3 a. In *Greene v. Solano County Jail*, 513 F.3d 982, 983 (9th Cir. 2008), the
4 Ninth Circuit concluded that in contradiction to RLUIPA's plain language
5 "the Claybank Jail's policy of prohibiting Greene, a maximum security
6 prisoner, from attending group religious worship services substantially
7 burdened his ability to exercise his religion." Although this Court
8 specifically cited *Greene* in an earlier Report and Recommendation, the
9 parties forego any discussion of *Greene*. The parties must provide an
10 explanation for why *Greene* does or does not apply to Mr. Penwell's
11 allegations.

12 b. The parties should address the question of **qualified immunity**—both as
13 to the First Amendment claim and the RLUIPA claim—and discuss the
14 impact of *Cutter v. Wilkinson*, 544 U.S. 709, 720–21 & n.10 (2005),
15 *Shakur v. Schriro*, 514 F.3d 878, 884–85 (9th Cir. 2008), and *Greene v.*
16 *Solano County Jail*, 513 F.3d 982, 983 (9th Cir. 2008).

17 c. The parties should also address the questions of **personal involvement**
18 and lack of **respondeat superior** liability.

19 2. Mr. Penwell's Rule 56(d) motion to take the depositions of **Lynell Sellers** and
20 **Merv Weidner** is **GRANTED**. The differing accounts of those declarants and of
21 Mr. Penwell and other inmates may assist resolution of the pending summary
22 judgment motion.

